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Jacob Tiang Lee Yee v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–8–01 OF 2015
TENGKU MAIMUN, BADARIAH SAHAMID AND KAMARDIN HASHIM JJCA
30 SEPTEMBER 2016

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Criminal Law — Appeal — Appeal against conviction and sentence — Appellant convicted and sentenced to death for offence of murder — Whether learned trial judge erred interpretation of s 17(1), (2) and (3) of the Evidence Act 1950 — Whether learned trial judge erred in failing to judicially appreciate probability of suicide pact between appellant and deceased — Whether learned trial judge erred in failing to direct her mind sufficiently that there was no contemporaneous direct unequivocal complaint of actus reus on part of appellant — Whether conviction safe — Penal Code s 302

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The appellant was charged with the offences of murder under s 302 of the Penal Code ('the Code') and attempted murder under s 307 of the Code. There were three charges for the offence of murder committed by the appellant against his wife, Ling Yung Ming and his two children namely Christine and Victor. The offence of attempted murder was committed by the appellant as against his son Vincent who was also the most important witness for the prosecution. The prosecution's case was that the appellant was the one who committed the offences as against the victims. This was supported with the evidence of Vincent who testified that he heard the appellant admitted that he had killed all the other victims; and the evidence of the conduct of the appellant during the incident. The trial court found that the prosecution had made out a prima facie case and called the appellant to enter his defence. The appellant remained silent but called one witness namely Su Ming Ngiik who testified that the appellant bought two gas cylinders and carried the same to his vehicle. The appellant also relied on the evidence of suicide notes which allegedly written by Yung Ming. At the end of the trial, the court found that the appellant had failed to raise a reasonable doubt on the prosecution's case, hence convicted and sentenced the appellant to death and 15 years imprisonment for charges of murder and attempted murder respectively. Dissatisfied with the decision, the appellant filed the present appeal as against the conviction and sentence for the offence of murder. The grounds of appeal were: (a) that the learned trial judge erred in the interpretation of s 17(1), (2) and (3) of the Evidence Act 1950 ('the Act'); (b) that the learned trial judge erred in failing to judicially appreciate the probability of suicide pact between the appellant and Ling Yung Ming; and (c) that the learned trial judge erred in failing to direct her mind sufficiently

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that there was no contemporaneous direct unequivocal complaint of the actus reus on the part of the appellant pertaining to the murders.

Held, dismissing the appeal and affirming the conviction and sentence imposed by the High Court:

(1) Although the learned trial judge did not direct her mind as to whether the statement was a *de facto* and *de jure* a confession, there was no sufficient grounds to depart from the finding of the learned trial judge as the conviction of the appellant was not premised solely on the appellant's admission to Vincent (see para 33).

(2) With regards to the issue of suicide pact, there was no evidence to establish that the letters/wills were written by Yung Ming. Further, according to PW10, there were defensive wounds on Yung Ming, namely bruises at the outside part of the right forearm and the interior part of the back of the right hand, which would have negated the suicide pact (see para 37).

(3) In the instant appeal, the direct evidence of Vincent was sufficient to link the appellant to the murders. The absence or lack of forensic evidence did not cast any doubt on the prosecution's case as such evidence was only corroborative in nature (see para 39).

(4) Based on the grounds of judgment, the learned trial judge had given sufficient judicial consideration to the issue of the absence of any contemporaneous direct unequivocal complaint of the actus reus of the appellant. The learned trial judge found that, as Vincent had testified that he did not see the appellant in the act of killing his mother and siblings but had only been told by the appellant that he had killed them, thus, it was unreasonable to expect Vincent to blurt out first thing to the prosecution's witness ('PW23') that the appellant had killed them. On the totality of the evidence, the court found the conviction safe (see paras 42–43 & 46).

[Bahasa Malaysia summary

Perayu dipertuduh dengan kesalahan membunuh di bawah s 302 Kanun Keseksaan ('Kanun') dan cubaan membunuh di bawah s 307 Kanun. Terdapat tiga pertuduhan untuk kesalahan membunuh yang dilakukan oleh perayu terhadap isterinya, Ling Yung Ming dan dua orang anaknya iaitu Christine dan Victor. Kesalahan cubaan membunuh dilakukan oleh perayu terhadap anaknya Vincent yang juga merupakan saksi paling penting bagi pihak pendakwaan. Kes pendakwaan adalah bahawa perayu adalah orang yang melakukan kesalahan tersebut terhadap mangsa. Ini disokong dengan bukti Vincent yang memberi keterangan bahawa dia mendengar perayu mengaku yang dia telah membunuh semua mangsa lain; dan bukti kelakuan perayu semasa kejadian tersebut. Mahkamah perbicaraan mendapati bahawa pihak

pendakwaan telah membuktikan kes prima facie dan memanggil perayu untuk membela diri. Perayu kekal diam tetapi memanggil seorang saksi iaitu Su Ming Ngiik yang memberi keterangan bahawa perayu membeli dua tong gas dan mengangkut tong gas tersebut ke dalam kenderaannya. Perayu juga bergantung dengan bukti nota bunuh diri yang didakwa ditulis oleh Yung Ming. Pada akhir perbicaraan, mahkamah mendapati perayu gagal untuk menimbulkan keraguan munasabah pada kes pendakwaan, oleh itu menyabitkan dan menghukum mati perayu dan 15 tahun penjara untuk pertuduhan membunuh dan cubaan membunuh, secara berasingan. Tidak berpuas hati dengan keputusan tersebut, perayu memfailkan rayuan ini terhadap sabitan dan hukuman untuk kesalahan membunuh. Alasan untuk rayuan adalah: (a) bahawa hakim perbicaraan yang bijaksana terkhilaf dalam menafsirkan s 17 (1), (2) dan (3) Akta Keterangan 1950 ('Akta'); (b) bahawa hakim perbicaraan terkhilaf apabila gagal untuk secara kehakiman menghargai kebarangkalian terdapat pakatan bunuh diri antara perayu dan Ling Yung Ming; dan (c) bahawa hakim perbicaraan yang bijaksana terkhilaf apabila gagal untuk mengarahkan fikirannya secukupnya bahawa tiada aduan secara langsung dan sezaman mengenai actus reus di pihak perayu berhubung pembunuhan tersebut.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman yang dikenakan oleh Mahkamah Tinggi:

(1) Walaupun hakim perbicaraan yang bijaksana tidak mengarahkan fikirannya sama ada kenyataan tersebut adalah pengakuan *de facto* dan *de jure*, tiada alasan yang mencukupi untuk menyimpang daripada dapatan hakim perbicaraan memandangkan sabitan perayu tidak hanya berasaskan pengakuan perayu kepada Vincent (lihat perenggan 33).

(2) Merujuk kepada isu pakatan bunuh diri, tiada keterangan untuk membuktikan bahawa surat/wasiat tersebut ditulis oleh Yung Ming. Selanjutnya, menurut PW10, terdapat luka defensif pada Yung Ming, iaitu lebam di bahagian luar lengan kanan dan bahagian dalam belakang tangan kanan, yang menafikan pakatan bunuh diri (lihat perenggan 37).

(3) Dalam rayuan ini, keterangan langsung Vincent adalah mencukupi untuk mengaitkan perayu dengan pembunuhan. Ketiadaan atau kekurangan bukti forensik tidak menimbulkan apa-apa keraguan terhadap kes pendakwaan kerana keterangan sebegitu hanya bersifat menyokong (lihat perenggan 39).

(4) Berdasarkan alasan penghakiman, hakim perbicaraan telah memberi pertimbangan kehakiman yang mencukupi kepada isu ketiadaan sebarang aduan secara langsung dan sezaman mengenai actus reus perayu. Hakim perbicaraan yang bijaksana mendapati bahawa, memandangkan Vincent telah memberi keterangan bahawa dia tidak nampak perayu bertindak membunuh ibu dan adik-beradiknya tetapi

hanya diberitahu oleh perayu bahawa dia telah membunuh mereka, oleh itu, adalah tidak munasabah untuk mengharapkan Vincent untuk mengatakannya terlebih dahulu tanpa berfikir kepada saksi pendakwaan ('PW23') bahawa perayu telah membunuh mereka. Berdasarkan keseluruhan keterangan, mahkamah mendapati sabitan tersebut dikekalkan (lihat perenggan 42–43 & 46).]

Notes

For cases on appeal against conviction and sentence, see 4(1) *Mallal's Digest* (5th Ed, 2015) paras 42–83.

Cases referred to

Liang Weng Heng v PP [2014] 2 MLJ 855 ; [2014] 5 CLJ 401, CA (refd)
PP v Mansor bin Mohd Rashid & Anor [1996] 3 MLJ 560; [1997] 1 CLJ 233, FC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393, FC (refd)
Zainuddin bin Abas lwn Pendakwa Raya [2015] 1 MLJ 309, CA (refd)

Legislation referred to

Evidence Act 1950 ss 17, 17(1), (2), (3), 18, 21.
Penal Code ss 302, 307, 309

Appeal from: Criminal Trial Nos SBW-45–1/1 of 2014, SBW-45–2/1 of 2014, SBW-45–3/1 of 2014, SBW-45–4/1 of 2014 and SBW-45–5/1 of 2014 (High Court, Sibu)

Orlando Chua (Wong, Orlando Chua & Kuok) for the appellant.
Norinna Bahadun (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

[1] The appellant was charged with the following offences in the High Court at Sibu:

(i) That you, on 05.07.2013 between the hours of about 6.20 a.m. and 9.50 a.m., in a house numbered 14B, Lorong 1B, Pulau Li Hua, in the District of Sibu, in the State of Sarawak, did commit murder by causing the death of Ling Yung Ming (f) (IC No. 730808-13-6184) and you have thereby committed and offence punishable under section 302 of the Penal Code.

(ii) That you, on 05.07.2013 between the hours of about 6.20 a.m. and 9.50 a.m., in a house numbered 14B, Lorong IB, Pulau Li Hua, in the District of Sibu, in the State of Sarawak, did commit murder by causing the death of Christine Liang Soon Ai (f) (IC No: 990223-13-5902) and you have

thereby committed an offence punishable under section 302 of the Penal Code.

(iii) That you, on 05.07.2013 between the hours of about 6.20 a.m. and 9.50 a.m., in a house numbered 14B, Lorong 1B, Pulau Li Hua, in the District of Sibu, in the State of Sarawak, did commit murder by causing the death of Victor Liang Soon Sheng (M) (IC No: 110519-13-0731) and you have thereby committed an offence punishable under section 302 of the Penal Code.

(iv) That you, on 05.07.2013 between the hours of about 6.20 a.m. and 9.50 a.m., in a house numbered 14B, Lorong 1B, Pulau Li Hua, in the District of Sibu, in the State of Sarawak, were found to have applied pressure to the neck with a piece of bamboo and suffocated with pillow, Vincent Tiang Soon Thai (M) (IC No: 960413-13-5973) and you thereby committed an offffence punishable under section 307 of the Penal Code.

(v) That you, on 05.07.2013 between the hours of about 6.20 a.m. and 9.50 a.m., in a house numbered 148, Lorong 1B, Pulau Li Hu, in the District of Sibu, in the State of Sarawak, attempted suicide, that is by hanging yourself by the neck by using a belt which was tied above the staircase, you have thereby committed an offence punishable under section 309 of the Penal Code.

[2] The learned High Court judge convicted and sentenced the appellant to death on the first three charges and to 15 years imprisonment on the fourth charge. The appellant was acquitted and discharged on the fifth charge without being called upon to enter his defence.

[3] Dissatisfied with the convictions and sentences, the appellant appealed to this court. We heard the appeal and had unanimously dismissed it. We now give our reasons.

THE PROSECUTION'S CASE

[4] On 5 July 2013 at past 9am, Ngan Kiu Eng ('PW23') and her husband had just returned home when Vincent Tiang Soon Tai (PW41/'Vincent'), suddenly appeared by their car. Vincent looked afraid and weak.

[5] Vincent said something had occurred at his house; that his father ('the appellant') had beaten him and that his mother and his siblings were motionless. Just then, the appellant came out of the house at No 14B. The appellant shouted at Vincent asking Vincent to return to the house.

[6] PW23 took Vincent into her house and then called the police. Soon afterwards PW23 saw the appellant leaving the house in a Toyota Hilux bearing registration number QAT 5566.

[7] L/Cpl Puteri Shafirra ('PW2') was on duty at Balai Polis Lanang on 5 July 2013. At about 10am, she received a call from a female who said that her neighbours residing at No 14B, Lorong 1B, Pulau Li Hua were quarrelling. PW2 relayed the information to the Operations Room, IPD Sibu. At about 10.15am, Cpl Nixon Taka ('PW13') and L/Cpl Sham Khairul from the MPV Unit responded to the call and went to the house at No 14B. Upon arrival, they met Vincent and PW23 in front of the house.

[8] At Vincent's request, PW13 and L/Cpl Sham followed him to the master bedroom upstairs to check on his mother, his sister and his younger brother. Inside the master bedroom, they found the motionless bodies of Vincent's mother ('Yung Ming'); his sister ('Christine') and his younger brother (Victor). Christine was lying on the bed, whereas Yung Ming and Victor were lying on a mattress which was on the floor. PW13 called for the ambulance and three paramedics led by Sulaiman bin Mahji ('PW17') arrived at about 10.30am. According to PW17, there was a strong odour of gas when he entered the master bedroom. PW17 examined the three bodies and found all of them dead.

[9] Dr Hwang ('PW15'), Dr Naomi Chieng ('PW16') and Dr Ting Ching Ching ('PW19') conducted reviews on the bodies of Yung Ming, Christine and Victor respectively and all confirmed the deaths of the three deceased persons. Dr Jamil bin Dolkadir ('PW10') conducted the post-mortem on Yung Ming, Christine and Victor and had prepared his reports exhs P129, P121 and P122 respectively.

[10] The cause of death of Yung Ming was stated to be asphyxia. PW10 opined that a soft object like the pillow ('exh P18(b)') and the towel (P21(c)) if applied with strong force on the face of Yung Ming, would in the ordinary course, cause her death by asphyxia. As for Christine, PW10 stated that the cause of death was strangulation at anterior neck. He explained that it was possible for one person with one hand to cover Christine's mouth with the pillow and at the same time strangulate her neck with the other hand. As regards Victor, PW10 testified that his death was caused by asphyxia aggravated by head injuries. A soft object like P18(b) or towel P21(c) if used with strong force on Victor's face to cover his mouth and nostril for at least five minutes would in the ordinary course, cause his death. PW10 ruled out the likelihood of suicide by Yung Ming and Christine. Yung Ming and Christine were 40 years and 14 years old respectively. Victor was two years old.

[11] Vincent, aged 18 was the most important witness for the prosecution. His testimony revealed the events which began on 3 July 2013 leading to his sudden appearance at PW23's house on 5 July 2013. According to Vincent, on the morning of 3 July 2013, the appellant had given him a couple of light blue

pills to take. The appellant told Vincent that they were vitamins. Later, Vincent was awoken by his mother who told him that the appellant had asked Vincent not to go to school. Soon afterwards, Vincent heard a commotion downstairs. When he went downstairs, he saw his mother holding the back of her head and the appellant was seen holding something in his hand. The appellant appeared to be emotional.

[12] Vincent further testified that it was then that he learnt the appellant was in some serious debt. Both his parents were crying and Vincent heard the appellant say he was going to '… take them to another place' and he heard his mother's response 'I will follow you but you cannot take the children' and 'for the sake of the children let me help'.

[13] The next day, at about 10pm his mother gave him the same pills that were given by the appellant the day earlier. Vincent said that his mother similarly told him they were vitamins. Vincent was then asked by the appellant to sleep in the master bedroom that evening. The air conditioning in his room and Christine's room were said to have had problems. Vincent and Christine slept in the master bedroom. Vincent woke up in the early morning of 5 July 2013 to a hissing sound. He asked his mother what that sound was and his mother said 'it was nothing'. She asked him to go back to sleep.

[14] Vincent stated that he woke up again when he was attacked by the appellant. The appellant tried to smother and choke him with a pillow. Vincent managed to break free and the appellant then beat him strongly using a bamboo stick on the back of his head and shoulders. After the bamboo stick broke, the appellant threatened Vincent not to fight back or he would use a knife to cut Vincent. Vincent saw a shape of a knife held by the appellant. Vincent then stopped fighting and the appellant coaxed him to lie down. Vincent laid down and the appellant used a pillow to smother or choke him. Vincent stated that as the appellant was trying to smother him, 'my father said that he killed my mother, my younger brother and sister and now he is going to kill me. After that he will meet us on the other side'. Vincent told the appellant that the pillow cannot kill him and he asked for the sleeping pills so that the appellant could 'settle' him when he was asleep. When the appellant went out of the room presumably to get the sleeping pills, Vincent escaped through the balcony and sought help from his neighbour, PW23.

FINDINGS AT THE END OF THE PROSECUTION'S CASE

[15] The learned trial judge considered the following essential elements of the murder charges against the appellant:

(a) the deaths of Yung Ming, Christine and Victor (the first ingredient);

(b) the deaths were the result of the injuries sustained by them (the second ingredient);

(c) their injuries were caused by or as a result of the acts of the appellant (the third ingredient);

(d) that in inflicting the injuries on the victims, the appellant:

(i) caused them with the intention of causing death; or

(ii) caused them with the intention of causing such bodily injuries as the appellant knew to be likely to cause death; or

(iii) caused them with the intention of causing such bodily injuries and such bodily injuries intended and inflicted were sufficient in the ordinary course of nature to cause death (the fourth ingredient).

[16] Her Ladyship found that the first ingredient was proven by the evidence of the medical officers PW15, PW16 and PW19 who initially received the bodies and the evidence of the elder brother of Yung Ming,

Ling Tong Ying ('PW28') who identified the bodies. In any event, the learned trial judge found that the deaths of the victims were not disputed by the appellant.

[17] On the second ingredient, through the evidence of PW10 who prepared the post mortem reports, the learned trial judge found that the cause of death of Yung Ming was asphyxia; the cause of death of Christine was strangulation at anterior neck and the cause of death of Victor was asphyxia with head injuries.

[18] As for the third ingredient, the learned trial judge accepted the evidence of Vincent, who although did not see the killing of the victims, had sufficiently placed the appellant at the scene of the crime at the time of the murders. Vincent had stated that there was no other person in the house where the incident occurred except him, the appellant and the victims.

[19] The learned trial judge considered the admissibility of Vincent's evidence that 'my father said that he had killed my younger sister, my mother and my younger brother' under s 17(3) of the Evidence Act 1950 ('the EA') and ruled that it amounted to an admission and was admissible under ss 17(1), 18 and 21 of the EA.

[20] In respect of the fourth ingredient, the learned trial judge found that it has been proven by the following evidence:

(a) the appellant had obtained sleeping pills from a private medical practitioner, Ting Heng Bing ('PW14') and had caused Vincent to take them;

(b) the appellant made everyone sleep in the master bedroom in the morning of 5 July 2013 even though Vincent and Christine each had their own rooms;

(c) the appellant had bought two tanks of gas and had released gas from them in the master bedroom where the victims and Vincent were sleeping;

(d) the acts of the appellant on Vincent; and

(e) the conduct of the appellant in running away after Vincent escaped to the neighbour's house.

[21] The learned trial judge found that the prosecution had made out a prima facie case against the appellant in respect of the first to the fourth charges. The appellant was thus called upon to enter his defence on the murder and the attempt to murder charges.

[22] The appellant elected not to give evidence. He remained silent. However he called one witness, namely Su Ming Ngiik ('DW1') who testified that at about 7.30am on 5 July 2013, the appellant came to her shop bringing along two empty gas cylinders. He exchanged them with two full gas cylinders yellow in colour that he carried one by one to his vehicle.

[23] The learned trial judge found that the defence failed to raise a reasonable doubt on the prosecution's case. The appellant was accordingly convicted and sentenced to death and to 15 years imprisonment for the charges of murder and attempt to murder, respectively.

THE APPEAL

[24] Learned counsel for the appellant raised the following grounds of appeal:

(a) that the learned trial judge erred in the interpretation of s 17(1), (2) and (3) of the EA;

(b) that the learned trial judge erred in failing to direct her mind sufficiently or in failing to judicially appreciate that there was in all probability a suicide pact arrived at between the appellant and Yung Ming; and

(c) that the learned trial judge erred in failing to direct her mind sufficiently that there was no contemporaneous direct unequivocal complaint of the actus reus on the part of the appellant pertaining to the three murders.

[25] Looking at the above grounds, we found that the appellant did not pursue his appeal against conviction and sentence in respect of the fourth charge, namely the attempt to murder Vincent.

[26] In respect of the first ground of appeal, the essence of learned counsel's submission was that there was no direct evidence that it was the appellant who had murdered the victims. The learned trial judge had relied substantially on the alleged 'admission' purportedly made by the appellant to Vincent to anchor the convictions. For all intents and purposes the alleged 'admission' made by the appellant to Vincent was in fact a 'confession' and was thus inadmissible as against the appellant under sub-s (3) of s 17 of the EA.

[27] As for the second ground of appeal, in contending that the learned trial judge failed to judicially appreciate that there was in all probability a suicide pact between Yung Ming and the appellant, learned counsel submitted that the learned trial judge failed to consider:

(a) the contemporaneous behaviour of Yung Ming;

(b) the letters or wills (exhs P126(b), P127(b), P128(b), P129(b) and P130(b)) which were consistent with that of suicide notes;

(c) the authorship of the suicide notes was that of Yung Ming;

(d) the circumstantial evidence in support of the alleged admission by the appellant and the direct evidence of Vincent were consistent with a suicide pact; and

(e) the absence of any physical injuries on the appellant and/or any forensic evidence to link the appellant to the murders.

[28] On the third ground of appeal, learned counsel submitted that the learned trial judge erred in not considering sufficiently or at all that there was no contemporaneous complaint by Vincent either to PW23 or in his police report on the alleged three murders by the appellant. All that Vincent said to PW23 was merely that the appellant had beaten him. Neither did Vincent disclose the appellant's alleged admission of the murders in his police report.

OUR DECISION

The admission of the appellant that he killed the victims

[29] Section 17 of the EA provides:

> (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

(2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence. A

(3) Subsection (2) shall have no application in Sarawak.

[30] To recapitulate, learned counsel had submitted that for all intents and purposes the appellant's admission to Vincent was a confession under sub-s (2) and thus inadmissible as against the appellant under sub-s (3) of s 17 of the EA. B

[31] The learned trial judge had considered the argument of the defence that the admission was inadmissible under sub-s (3) and Her Ladyship disagreed with the defence. Her Ladyship was of the opinion that since the appellant's statement to Vincent that he had killed the mother, sister and brother stated or suggested the inference that the appellant committed the offence that he was charged with, it amounted to an admission under s 17(1) of the EA. In a nutshell, the learned trial judge concluded that 'admissions' are admissible in Sarawak. C D

[32] Learned counsel's complaint was that the learned trial judge ought to have asked the pertinent question whether the statement uttered by the appellant to Vincent that 'my father said that he had killed my younger sister, my mother and my younger brother ...' was *de facto* and *de jure* a 'confession' as defined by s 17(2). It was submitted that Her Ladyship had erred in not directing her mind as to whether the statement was a *de facto* or *de jure* confession under s 17(2) of the EA. E F

[33] Although the learned trial judge did not direct her mind as to whether the statement was a *de facto* and *de jure* a confession, we found no sufficient grounds to depart from the finding of the learned trial judge as the conviction of the appellant was not premised solely on the appellant's admission to Vincent. In this regard, the decision of this court in *Liang Weng Heng v Public Prosecutor* [2014] 2 MLJ 855; [2014] 5 CLJ 401 was instructive where Hamid Sultan Abu Backer JCA said at p 860 (MLJ); 409 (CLJ): G

[9] The Indian position is that no confession statement by the accused made during police custody is admissible with a small window for permitting 'information' that led to discovery of the incriminating evidence. Even though s 27 says 'whether the information amounts to confession or not' the Indian decisions are clear on this issue to say that the 'information' will never amount to plenary confession ie direct acknowledgement of guilt (see *Pakala Narayana Swami v King-Emperor* [1939] 1 MLJ 59; [1939] 1 LNS 62). H I

In Malaysia the Indian position will only apply to Sarawak. That is to say in Sarawak the prosecution cannot establish its case purely in reliance of the 'information' per se.

The suicide pact

[34] Learned counsel's submission was that the learned trial judge failed to direct her mind sufficiently and/or failed to judicially appreciate that there was in all probability a suicide pact between the appellant and Yung Ming. In this regard, learned counsel referred to the following:

(a) the behaviour of Yung Ming in giving Vincent the sleeping pills and in asking Vincent to go back to sleep after Vincent heard the hissing sound;

(b) the absence of the appellant's skin tissues in Yung Ming's fingers and the absence of any evidence to show that the appellant had suffered any injuries inflicted by a full-grown woman fighting for her life; and

(c) the letters/wills written in Mandarin which were suicide notes and which learned counsel contended, were written by Yung Ming.

[35] Learned counsel's contention, even if accepted will only absolve the appellant of the charge as against Yung Ming but not Christine and Victor. Nevertheless, we found no merits in the submission of learned counsel. The grounds of judgment clearly reflected Her Ladyship's consideration of the letters/wills where she rejected the assertion of the defence that they were written by Yung Ming. In rejecting such assertion, the learned trial judge had considered the contents of exh P128(b) which was addressed to PW28 which translation reads: 'I call you not because I want to borrow money from you. I just want to tell you my worries ... I know you dislike me but I still wish that you could concern about me ...', P130(b) addressed to 'Sister Ah Hiong' which stated 'Thank you for your concern and assistance. I am gone ...' and P126(b) addressed to one Tiang Lee Kion which stated: 'Please cremate our bodies and throw the ashes into the seas ...'.

[36] Having considered the contents which the learned trial judge found did not show any propensity on the part of Yung Ming to murder Christine and Victor, Her Ladyship found no proof that those letters were written by Yung Ming as none of the witnesses could identify the handwriting as that of Yung Ming's. Vincent could not identify the handwriting and neither could Yung Ming's sister, Ling Yii Choo ('PW20') nor her brother, PW28. PW20 testified that she had never seen Yung Ming write her name in such a way as found in the letters/wills although she had seen Yung Ming write her name in a different Mandarin character. We agreed with the learned trial judge that there was no evidence to establish that the letters/wills were written by Yung Ming.

[37] Further, as submitted by learned DPP, a suicide pact would suggest acquiescence of one's death. However, according to PW10, there were

defensive wounds on Yung Ming, namely bruises at the outside part of the right forearm and the interior part of the back of the right hand, which would have negated the suicide pact.

[38] The absence of any physical injuries on the person of the appellant and the lack of any forensic or DNA evidence were also considered by the learned trial judge where she found that they were not fatal to the prosecution's case in view of the evidence of Vincent whose evidence established the presence of the appellant at the crime scene at the material time and the appellant's statement to Vincent admitting that he had killed Yung Ming, Christine and Victor. We agreed with the learned trial judge.

[39] Where the identity of a culprit was in question or was required to be proved, forensic or DNA evidence would be of great value and significance (see *Zainuddin bin Abas lwn Pendakwa Raya* [2015] 1 MLJ 309; *Pendakwa Raya v Mansor bin Mohd Rashid & Anor* [1996] 3 MLJ 560; [1997] 1 CLJ 233). In the instant appeal, the direct evidence of Vincent was sufficient to link the appellant to the murders. The absence or lack of forensic evidence did not cast any doubt on the prosecution's case as such evidence was only corroborative in nature. More so when there was no suggestion by the defence of any unknown or third person in the house who could have committed the murders and when Vincent's evidence was corroborated by the following witnesses:

(a) PW14 who stated that the appellant had bought nitrozepam (the light blue sleeping pills) from him;

(b) Sgt Jiffen anak Satok ('PW9') who recovered a broken bamboo stick ('exh P17(a)') and a knife ('exh P15') from the house and who saw two yellow gas tanks outside the master bedroom (PW9's evidence on the yellow gas tanks was in turn supported by DW1);

(c) science officer, Phoon Yoon Keat ('PW3') who found Vincent's DNA on exh P17(a) and on the pillow, exh P18(b); and

(d) the medical evidence of Dr Ahmad Shafie ('PW18'), Dr Peter Lau Sie Teck ('PW33'), Dr Lai Boon Foo ('PW30') who examined Vincent and found that the injuries suffered by Vincent were consistent with an attempt to strangulate, repeated hitting at the back of his head as well as jumping off a high place. The doctors had also stated that the injuries were not self-inflicted.

Failure to state the appellant's admission contemporaneously

[40] The submission of learned counsel was that upon the first opportunity on meeting with his neighbour PW23 right after the assault by the appellant, Vincent had chosen to merely tell PW23 that the appellant had beaten him.

Learned counsel submitted that it was expected of Vincent who was 18 years old then to have blurted out the most crucial information by telling PW23 that the appellant had killed all his family members. Vincent also did not disclose the most crucial information in his police report. Learned counsel contended that the learned trial judge erred in failing to consider that there was no contemporaneous direct unequivocal complaint of the actus reus of the appellant in the three murders.

[41] We disagreed with learned counsel. We found that the learned trial judge had considered the issue as can be seen from her grounds of judgment below:

> [37] ... the defence submitted that PW41's evidence that the accused had made such an admission to him was to be regarded with caution because, firstly, PW41 did not tell PW23 first thing that his father had killed his mother, sister and brother but instead had told her that his father had beaten him. Secondly, PW41 did not lodge a police report pertaining to this matter and none of the police witnesses testified on this alleged admission. The defence cited the case of *Hashim bin Ariffin dan satu lagi lwn Pendakwa Raya* [2014] 1 MLJ 345; [2013] 8 CLJ 611, where the Court of Appeal had doubted the credibility of a witness ('SP3') on his identification of the accused being involved in the fight and stabbing of the victim given that SP3 had failed to tell the police of this information or make a police report on it. The defence submitted that Vincent's evidence on this was likewise doubtful and ergo, his credibility questionable.
>
> [38] With respect, I did not accept the foregoing submission of the defence. It is to be noted that when PW41 was in the witness stand, the defence never challenged or disputed his evidence that the accused had made the admission to him. As we have earlier seen, what the defence had challenged (without success) was the admissibility of the statement constituting the admission and not the making or authenticity of it. In fact, during PW41's cross-examination, the defence touched only very briefly on the making of the admission ...
>
> [39] Going by the questions posed, the defence did not dispute PW41's evidence on the making of the admission but had instead accepted and confirmed it. It is well settled law that a party who had failed to cross-examine a witness on a particular matter in respect of which it is proposed to contradict his evidence-in-chief will not be permitted to invite the court to disbelieve the witness's evidence on that matter (see *Browne vDunn* (1894) 6 R 67) ... For the same reason, the defence in our present case was not in a position to invite this court to disbelieve PW41's evidence on the making of the admission or to suggest that he was not speaking the truth when he said that his father made the admission to him on account of these matters raised by the defence during submissions.

[42] In the light of the above finding, it cannot be said that the learned trial judge had failed to consider the absence of any contemporaneous direct unequivocal complaint of the actus reus of the appellant. In fact, the learned trial judge had given sufficient judicial consideration to the issue when Her

Ladyship had also referred to the case of *Hashim Arriffin* relied upon by the defence before ruling that reliance on that case was misplaced.

[43] In concluding that there was nothing perverse or discreditable in Vincent's act of having informed PW23 first thing what his father did to him rather than telling her as to who had killed his mother, sister and brother, the learned trial judge found that Vincent was merely telling PW23 what he himself had seen, heard and suffered at the hands of his father. The learned trial judge opined that it was only natural that Vincent would want to tell PW23 these things first. As Vincent had testified, he did not see his father in the act of killing his mother and siblings but had only been told by the father that he had killed them. Hence the learned trial judge found that it was unreasonable to expect Vincent to blurt out first thing to PW23 that his father had killed them.

[44] We agreed with the learned trial judge and we found no appealable error in respect of the above finding as to warrant our appellate intervention.

CONCLUSION

[45] At the end of the prosecution's case, the learned trial judge had asked herself whether the evidence adduced was sufficient to convict the appellant if he elected to remain silent and Her Ladyship found that the answer was in the affirmative, hence the appellant was called upon to enter his defence. The appellant chose to remain silent and although DW1 testified for the defence, her evidence merely confirmed the prosecution's case as regards the two gas tanks found outside the master bedroom. It did not cast a reasonable doubt on the prosecution's case. Since the appellant had elected to remain silent, the learned trial judge had correctly convicted him. It was not open to the court to then re-assess the evidence and to determine whether the prosecution had established its case beyond reasonable doubt. The absence of any evidence from the appellant that cast a reasonable doubt on the prosecution's case rendered the prima facie case one that was established beyond reasonable doubt (see *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393).

[46] On the whole, we found no compelling reason to disturb the findings of the learned trial judge. The findings were not perverse and were in accord with the evidence and we found the conviction safe. We therefore unanimously dismissed the appeal and we affirmed the conviction and sentence imposed by the High Court.

Appeal dismissed and conviction and sentence imposed by High Court affirmed.

Reported by Dzulqarnain Ab Fatar